IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.4276 OF 2005

Mayankumar Jaising Bhagat, minor
through father and natural guradian
Shri Jaising Soma Bhagat. ...Petitioner.

Vs.

State of Maharashtra & Ors. ...Respondents.

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Mr. R. K. Mendadkar with Ms. Helen Mandlik for the Petitioner.
Mr. C. R. Sonawane, AGP for the Respondents.

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CORAM : A.P. SHAH AND
DR.D.Y.CHANDRACHUD, JJ.

August 5, 2005.

P.C.:

Rule, by consent returnable forthwith. The Learned AGP waives service. By consent of Counsel and at their request taken up for hearing.

2. By this petition, the Petitioner seeks to challenge the order passed by the Caste Scrutiny Committee dated 13th June 2005, holding that the Petitioner is migrant from the State of Gujarat, to the State of Maharashtra and hence, not entitled for the

benefits and concessions available to the Backward Classes in the State of Maharashtra. The Petitioner belongs to Mahyavanshi caste which is recognised as Scheduled Caste in the State of Maharashtra. The father of the Petitioner was born in Umbargaon Taluka of Surat District which was the part of the Old Bombay State on the date of the Presidential Order of 1950. The Petitioner's father migrated to Mumbai sometime in 1983 and is serving in Air India at Mumbai.

Mr.Mendadkar submitted that as far as the Petitioner is concerned, his caste has been classified as a Scheduled Caste vide Presidential Order dated 10th August 1950. The Petitioner's father and the Petitioner were born at Umbargaon Taluka in Surat District. Surat District was a part of the erstwhile State of Bombay. Therefore, according to Mr.Mendadkar, if the date of the Presidential Order is taken into account, the same will be applicable to the State of Bombay which included Surat District and the Petitioner's father would, thus, be governed by the Presidential Order on the hypothesis that he was a resident of the then State of Bombay. The learned Counsel placed reliance on the decision of the Supreme Court in the case of **Action Committee on issue of**

Caste Certificate to Scheduled Caste and Scheduled Tribes in the State of Maharashtra and Anr. vs. Union of India and anr., reported in (1994) 5 SCC 244, where the Supreme Court has observed as under :

> "4. The Petitioners herein are aggrieved because the State of Maharashtra has denied the benefits and privileges available to Scheduled Castes and Scheduled Tribes specified in relation to that State to members of the Scheduled Castes and Scheduled Tribes belonging to other States who have migrated from other States to the State of Maharashtra. These benefits and privileges are denied on the basis of certain circulars and letters issued by the Government of India and consequential instructions issued by the State of Maharashtra indicating that members belonging to the Scheduled Castes and Scheduled Tribes specified in relation to any other State shall not be entitled to the benefits and privileges accorded by the State of Maharashtra unless the person concerned is shown to be a permanent resident of the State of Maharashtra on 10th August 1950

in the case of Scheduled Castes and 6th September 1950 in the case of Scheduled Tribes. These are the dates on which the President first promulgated the Constitution (Scheduled Castes) Order, 1950 and the Constitution (Scheduled Tribes) Order, 1950. The Petitioners therefore, contend that the denial of the benefits and the privileges by the State of Maharashtra is violative of the fundamental rights conferred on citizens by Articles 14, 15(1), 16(2) and 19 of the Constitution, besides being contrary to the letter and spirit of Articles 341 and 342 of the Constitution. The Petitioners contend that a bare perusal of the Constitution (Scheduled Castes) Order, 1950 and the Constitution (Scheduled Tribes) Order, 1950 as amended by the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 would show the same castes and tribes specified in respect of more than one State. Those belonging to the Scheduled Castes and the Scheduled Tribes, wherever situate, are economically backward. Besides on account of social and economic backwardness they have to suffer a host of indignities and atrocities and are very often compelled

to migrate from one State to another in search of livelihood or to escape the wrath of their operators. Earlier they did not experience any difficulty in obtaining caste/tribe certificates to secure benefits available to the Scheduled Castes and Scheduled Tribes in the State of Maharashtra. The situation, however, changed drastically after the Government of India issued a communication addressed to Chief Secretaries to all State Governments/Union Territories on 22-3-1977.

-6. The Government of India in the Ministry of Home Affairs noticed that certificates belonging to a particular Scheduled Caste/Scheduled Tribe were not issued strictly in accordance with the principle governing the issue of such certificates presumably on account of lack of understanding of the legal position regarding the concept of the term “residence” on the part of the authorities concerned. With a view to clarifying the legal position, the communication of 22-3-1977 came to be issued. The relevant part of that communication may be reproduced for ready reference:

"As required under Articles 341 and 342 of the Constitution, the President has, with respect to every State and Union Territory and where it is State after consultation with the Governor of the concerned State, issued orders notifying various Castes and tribes as Scheduled Castes and Scheduled Tribes in relation to that State or Union Territory from time to time. The inter-State area restrictions have been deliberately imposed so that the people belonging to the specific community residing in a specific area, which has been assessed to qualify for the Scheduled Castes or Scheduled Tribes status, only benefit from the facilities provided for them. Since the people belonging to the same caste but living in different State/Union Territories may not both be treated as belong to Scheduled Caste/Tribe or vice versa. Thus, the residence of a particular person in a particular locality assumes a special significance. This residence has not to be understood in the liberal or ordinary sense of the word. On the other hand it connotes the permanent residence of a person on the date of the notification of the Presidential Order

Scheduling his caste/tribe in relation to that locality. Thus a person who is temporarily away from his permanent place or abode at the time of the notification of the Presidential order applicable in this case, say for example, to earn a living or seek education, etc. can also be regarded as Scheduled Caste or a Scheduled Tribe, as the case may be, if his caste/tribe has been specified in that order in relation to his State/Union Territory. But he cannot be treated as such in relation to the place of his temporary residence notwithstanding the fact that the name of his caste/tribe has been scheduled in respect of that area in any Presidential Order."

The communication further states that with a view to ensuing the veracity of permanent residence of a person and that of the Caste/tribe to which he claims to belong, the Government of India made a special provision in the proforma prescribed for the issue of such certificates. In order to ensure that competent authorities should alone issue such certificates the Government of India (Department of Personnel and Administrative Reforms)

by a letter dated 6-8-1975 indicated the authorities locality wise who should issue the certificates. The Communication then proceeds to add:

“Thus the Revenue Authority of one district would not be competent to issue such a certificate in respect of persons belonging to another district. Nor can such an authority of one State/Union Territory issue such certificates in respect of persons whose place of permanent residence at the time of the notification of a particular Presidential Order, has been in a different State/Union Territory.”

This was emphasized because only the revenue authorities of the locality of which the individual is the resident alone would have access to revenue records to be in a position to make reliable enquiries before the issuance of the certificate. In regard to persons born after the date of the notification of the relevant Presidential Order, the communication states that the place of residency for the purposes of acquiring

Scheduled Castes or Scheduled Tribes certificates is the place of permanent abode of their parents at the time of the notification of the Presidential Order under which they claim to belong to such a caste/tribe".

4. The above observations make it clear that the relevant date for considering benefits of the Presidential Order is the date of the Presidential Order. Even the communication dated 22-3-1977 referred in the aforesaid decision of the Apex Court emphasised that in regard to persons born after the date of the notification of the relevant Presidential Order, the place of residence for the purpose of acquiring Scheduled Caste or Scheduled Tribe certificate is the place of permanent abode of their parents at the time of the notification of the Presidential Order under which they claim to belong to such a caste/tribe.

5. In the circumstances, it is impossible to sustain the order of the Scrutiny Committee. Hence, we hold that Respondent No.2 was not justified in refusing to consider the Petitioner's caste claim on the ground that he is migrant from the Surat district to the State of Maharashtra.

6. In the light of the above, we have no hesitation in setting aside the order of the Scrutiny Committee dated 13th June 2005 and the same is accordingly quashed and set aside. Respondent No.2 is directed to grant caste validity certificate in favour of the Petitioner as belonging to Mahyawanshi Scheduled Caste expeditiously and in any event within a period of two months from today.

7. Rule is made absolute accordingly with no order as to costs.

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